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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,955	02/20/2002	Robert Swift	3728-0103P	3035

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EXAMINER

CHIN, PAUL T

ART UNIT PAPER NUMBER

3652

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,955

Applicant(s)

SWIFT ET AL.

Examiner

PAUL T. CHIN

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004 and 14 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's proposed amendment filed November 15, 2004, and January 14, 2005, and the arguments have been fully considered. Applicant proposes to cancel claims 13-20, and present claims 1-12 and 21-23, which was allowed in the final office action mailed on July 14, 2004. Due to the broadness of the claims 1 and 8, the prior art of record has been reconsidered and further search has been made before allowance. Upon further consideration, the indicated allowability of claims 1-12, 21, and 22, is withdrawn in view of the newly discovered reference(s) to Ward (5,359,942) and Hale et al. (3,647,255). The amendments filed have been entered and the finality of that action is withdrawn. PROSECUTION IS HEREBY REOPENED. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5, 6, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for "*the enclosure*" (claims 5 and 11, line 1). Note that claim 5 depends on claim 1 and claim 11 depends on claim 8. Moreover, claim 6 is vague and indefinite. The claim recites "a switch" and it is not clearly understood as to whether the "switch" refers to "the manually operated switch (of claim 1)" or "the additional switch to sent current".

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4,6,7, and 21, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Ward (5,359,942) (see PTO-892).

Ward (5,359,942) discloses a device comprising a body portion (21) (Fig. 1); a hydraulic device (55) connected to the body portion; at least a first member (47, 48) movable by hydraulic pressure applied to the cylinder; a hydraulic pump (41); a power source, a battery (39); a controller (40) comprising a receiver, or an antenna (87) (Col 9, lines 1-19) for receiving a control signal and having a manually operated control switch (see Fig. 4, and Col 10, lines 60-66) for transmitting power to the pump whereby the hydraulic motor of the hydraulic device (55) may be remotely controlled by the control signal (operator control station 85) (see from Col 9, line 1, to Col 10, line 66). It is pointed out that Ward's device (5,359,942) contains all the structural elements as recited in claim 1 and the device is capable of being suspended from a crane to be moved to another location or to be repaired.

Re claim 2, Ward's device (5,359,942) shows an enclosure (25) and a mount (28,30) having a planar portion and two rails (see Fig. 2)

Re claim 3, a valve (70,90) is shown as the diagram 5.

Re claim 4, the device is a hydraulic dumpster, the first member is a door (47,48), and the hydraulic cylinder (55) opens or closes the door (47,48) (Fig. 2) to dump contents such as road bed ballast (Col 4, lines 7-12) from the dumpster.

Re claim 7, the pump (41) comprises a tank or reservoir (8) and a motor (36,38) (Fig. 3).

Art Unit: 3652

Re claim 21, Ward's device (5,359,942) shows the manually operated control switch(s) (97,97) (92) (see Fig. 4) comprise open, closed, and off positions.

6. Claims 8-10 and 12, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hale et al. (3,647,255).

Hale et al. (3,647,255) discloses a system to operate a device suspended from a crane (Col 2, lines 12-18), comprising a pump (18) to a hydraulic cylinder (62) on the device suspended from the crane; a power source (Col 3, lines 41-50); a controller comprising a receiver (114) for receiving a control signal, a manually operated control switch (100) (see Fig. 2) for substantially transmitting power to the pump, and a transmitter (Col 3, lines 52-60) for remotely transmitting the signal to the receiver.

Re claim 9, Hale et al. (3,647,255) shows an enclosure or a housing (Fig. 2) and a horizontally extending mount where the chains (14,14) are attached to (see Fig. 2) and a mount comprising two extending rails extending from the enclosure where the cable (18 and 20) are tied.

Re claim 10, a valve (82,84) is shown as the diagram 5.

Re claim 12, Hale et al. (3,647,255), as broadly are recited, shows the cylinder (62) opens and close the pivotal arms, which can be considered as a door, on the device.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward's device (5,359,942) in view of Bounds (Re. 36,685).

Ward's device (5,359,942), as presented in section 5 above, does not show that the enclosure is being made of a metal. However, Bounds (Re. 36,685) discloses a discharged opening (11) comprising a metal plate (27) (Fig. 3, Col 6, lines 38-50). Accordingly, it would have been obvious design choice on the enclosure (25) of Ward's device (5,359,942) to be made of metal as taught by Bounds (Re. 36,685) to provide stiff and reliable enclosure.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hale et al. (3,647,255) in view of Bounds (Re. 36,685).

Hale et al. (3,647,255), as presented in section 6 above, does not show that the enclosure is being made of a metal. However, Bounds (Re. 36,685) discloses a discharged opening (11) comprising a metal plate (27) (Fig. 3, Col 6, lines 38-50). Accordingly, it would have been obvious design choice on the enclosure of Hale et al. (3,647,255) to be made of metal as taught by Bounds (Re. 36,685) to provide stiff and reliable enclosure.

10. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hale et al. (3,647,255) in view of Prescott et al. (5,624,237).

Hale et al. (3,647,255), as presented in section 6 above, does not show the manual switch comprises open, closed, and off positions. However, Prescott et al. (5,624,237) discloses a switch (98) having on, off, and close (see Fig. 3) to control the pump, motor, through a valve. Accordingly, it would have been obvious design choice to provide a

Art Unit: 3652

switch capable of performing an on, off, and closed position on the Hale et al. device (3,647,255) as taught by Prescott et al. (5,624,237) providing more flexibility to a user.

11. Claims 1-3,5-12, 21, and 22, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Fathauer (3,858,728) (see Paper No. 5) in view of Liegel et al. (5,634,778).

Fathauer (3,858,728) discloses a radio controlled hydraulic device for use when suspended from a crane, comprising a body portion (13) for suspending from the crane; a hydraulic cylinder (33) for holding hydraulic fluid; at least a first member (12) connected to the body portion; a hydraulic pump (53) connected to the cylinder for pumping; a power source (64); a controller having a receiver (66) for receiving a control signal; a wireless transmitter (83) for remotely transmitting the signal to the receiver; a switch (Fig. 8) (Col 6, lines 1-17); a valve (41-43) for controlling the direction of the flow of the fluid; and an electric motor (60) for driving the hydraulic pump. Fathauer (3,858,728) does not disclose a manually operated control switch for transmitting power to the pump. However, Liegel et al. (5,634,778) disclose a remotely control pump a manually operated control switch, including a pump button (38), and a manual release button (42) (Fig. 4) (Col 3, lines 47-58), for transmitting power to the pump in the event of the batter power is lost or diminished. Accordingly, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide a manually controllable switch on the Fathauer's device (3,858,728) as taught by Liegel et al. (5,634,778) so that the modified device would be capable of controlling remotely and also manual to override the remote control mode. It is also pointed out that the modified

Art Unit: 3652

device shows different switches (104-109) on the panel (82) (Fig. 6A) capable of on, off, or closed positions.

Re claim 2, the modified Fathauer's device (3,858,728) shows an enclosure (Fig. 3) and a mount (Fig. 4) having a planar portion and two rails.

Re claim 3, a valve (70,90) is shown as the figure 5,

Re claim 5, the modified Fathauer's device (3,858,728) does not show that the enclosure is being made of a metal. Accordingly, it would have been obvious design choice on the enclosure the modified Fathauer's device to be made of metal to provide stiff and reliable enclosure.

Re claim 7, the pump comprises a tank or reservoir (52) and a motor (60) (Fig. 3).

Re claims 21 and 22, Ward's device (5,359,942) shows the manually operated control switch(s) (97,97) (92) (see Fig. 4) comprise open, closed, and off positions.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3652

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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